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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/082,397      | 08/06/2002  | Mark W. Miles        | 5652P013XCD         | 6992             |

7590 07/22/2004

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| EXAMINER |
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MAI, HUY KIM

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

2873

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                |  |
|------------------------------|-------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/082,397 | Applicant(s)<br>MILES, MARK W. |  |
|                              | Examiner<br>Huy K. Mai        | Art Unit<br>2873               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 60-71 is/are pending in the application.
- 4a) Of the above claim(s) 60-67 and 70 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 68 is/are allowed.
- 6) ☒ Claim(s) 69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/20/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on May 20, 2004 was filed after the mailing date of the action on Jan. 5, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 69 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (5,212,582).

The limitations in claims 69 and 71 are shown in Nelson's Figs. 2-4, 10, column 3, line 62 through column 7, line 58. Nelson discloses a device comprising a sandwich of two or more layers, each of layers comprising one or more components 16,30,40 which respectively serve specific functions including electrical, mechanical, and optical.

Regards claim 71, Nelson discloses an electro-optical device comprising a sandwich of two or more layers 16,61, at least one of layers being movable; the movable layer including a deposited stiffener 32,62 to cause the movable layer to remain parallel to another of the layer during operation.

### ***Allowable Subject Matter***

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4. Claim 68 is allowed.

***Response to Arguments***

Applicant's arguments filed April 8, 2004 have been fully considered but they are not persuasive. The applicant argues that "Both claims 69 and 71 claim an "interferometric modulator" and "Nelson does not anticipated claims 69 and 71." These arguments are substantially incorrect. The claimed invention in claims 69 and 71 called for "An interferometric modulator". However, the context of the entire claims does not describe "interferometrically" operating, but serve specific functions including electrical, mechanical, and optical. The nelson's device comprises elements serve specific functions including electrical, mechanical, and optical as claimed by the applicant. Therefore, the Nelson's device is inherently does the same function of "interferometrically" operating because the same structure should do the same function.

Particularly, regarding claim 69, Nelson discloses an electro-optical device (modulator) comprising a sandwich of two or more layers, each of the layers comprising one or more components 16,30,40 which respectively serve specific functions including electrical, mechanical, and optical as the same as the structure of claim 69. If claim 69 performs the function "interferometrically operating", the Nelson's electric-optical device inherently performs the function "interferometrically operating" as the applicant does because the same structure should do the same function.

Similarly, regarding to claim 71, Nelson discloses an electro-optical device comprising a sandwich of two or more layers 16, 61, at least one of layers being movable respect to the hinge 30,52, the movable layer including a deposited stiffener (layers 16 on the layer 30 or the layers

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54,56 on the layer 50) that is sufficiently stiff to cause the movable layer remain parallel to the another of layers during the operation. If claim 71 performs the function "interferometrically operating", the Nelson's electric-optical device inherently performs the function "interferometrically operating" as the applicant does because the same structure should do the same function

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.



Huy Mai  
Primary Examiner  
Art Unit 2873

HKM/  
July 21, 2004